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 TRAFFICSCHOOL.COM, INC. and
 8 DRIVERS ED DIRECT, LLC, California companies.

9
 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12

13 TRAFFICSCHOOL.COM, INC.,
 14 a California corporation; DRIVERS ED
 15 DIRECT, LLC, a California limited
 liability company,

16 Plaintiffs,

17 vs.

18 EDRIVER, INC., a California
 corporation; ONLINE GURU, INC.,
 19 FIND MY SPECIALIST, INC., and
 SERIOUSNET, INC., California
 20 corporations; RAVI K. LAHOTI, an
 individual; RAJ LAHOTI, an individual;
 21 and DOES 1 through 10,

22 Defendants.

Case No. CV 06-7561 PA (CWx)

The Honorable Percy Anderson

PLAINTIFFS' **DESIGNATION OF
 SELECTED DEPOSITION
 TESTIMONY** OF ITAMAR
 SIMONSON IN LIEU OF CROSS-
 EXAMINATION PURSUANT TO
 COURT ORDER ISSUED FROM
 BENCH ON 11/8/2007

Trial: November 6, 2007

1 Plaintiffs' designate the following testimony of Itamar Simonson to impeach
2 particular allegations contained in the trial declaration of Itamar Simonson, signed
3 August 25, 2007.

4 The parties in this case have met and conferred and agreed that in order to
5 expedite the trial and conserve judicial resources, the parties would, to the extent
6 possible, offer evidence by deposition excerpts under the terms of this Court's minute
7 order dated November 8, 2007.

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Page 94:18-25, Page 95:1-16	Survey No. 1, is acceptable.	Declaration of Itamar Simonson, ¶26-27
Page 96:11-25, Page 97:1-7, Page 100:6-25, Page 101:1-9	Dr. Simonson did not study the trafficschool market and has no expertise on the demographics of the trafficschool survey respondents.	Declaration of Itamar Simonson, ¶26-35
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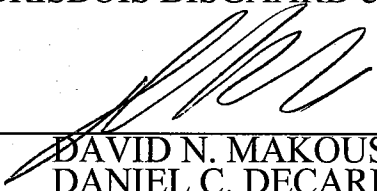
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DATED: November 8, 2007

LEWIS BRISBOIS BISGAARD & SMITH LLP

By


 DAVID N. MAKOUS
 DANIEL C. DECARLO
 MINA I. HAMILTON
 Attorneys for Plaintiffs

FILE
25162-15

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRAFFICSCHOOL.COM, INC.,)
a California corporation;)
DRIVERS ED DIRECT, LLC.,)
a California limited)
liability company,)
Plaintiffs,)

vs.) No. CV 06-7561 PA(CWx)

EDRIVER, INC., ONLINE GURU,) PAGES 1 - 246
INC., FIND MY SPECIALIST,)
INC., and SERIOUSNET, INC.,)
California corporations;)
RAVI K. LAHOTI, an individual;))
RAJ LAHOTI, an individual;)
DOES 1 through 10,)
Defendants.)

**CERTIFIED
COPY**

DEPOSITION OF ITAMAR SIMONSON, Ph.D.

WEDNESDAY, AUGUST 29, 2007



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1 A. I don't remember. A few minutes. I vaguely
2 recall that he might have testified about that, but I
3 don't remember exactly.

4 Q. Okay. Have you attempted to determine how long
5 the consumers -- the survey respondents in our case
6 spent on any of the stimuli, observing it?

7 A. Are you talking about the survey? What are you
8 asking about?

9 Q. Have you attempted to determine how long any of
10 the survey respondents in Dr. Maronick's surveys spent
11 looking at any of the stimuli?

12 A. I did not conduct --

13 MR. DeGROOT: Objection, vague.

14 THE WITNESS: Did not conduct a separate
15 investigation of that.

16 BY MR. MAKOUS:

17 Q. So at the present time, you don't know if they
18 spent a microsecond or five minutes, do you?

19 A. No, I think it was -- about what, spending on
20 what? On a particular page, on a particular question,
21 on the entire survey? What are you asking about?

22 Q. There was several stimuli presented in
23 Dr. Maronick's survey, correct?

24 A. Which one?

25 Q. Well, there was several surveys, correct?

1 A. Yes.

2 Q. You're so -- you're so -- so -- it's so -- so
3 difficult for you to answer questions.

4 There were several surveys conducted, right?

5 A. Yes.

6 Q. All right, and there were different stimuli
7 offered in each survey, weren't there?

8 A. I don't remember if survey 1 had --

9 Q. Okay, we'll agree survey 1 didn't offer
10 stimuli. But surveys 2, 3, offered stimuli, correct?

11 A. Two and 3 did, yes.

12 Q. All right. And do you remember how long any of
13 the particular respondents looked at the stimuli in
14 surveys 2 and 3?

15 A. I don't remember. I'm not sure I received that
16 data.

17 Q. Would you be interested in knowing that?

18 A. I've -- not -- not -- I don't -- I didn't think
19 that that was particularly important. I presumed that
20 that would be similar to other internet surveys that I
21 encountered in the past, using online pools.

22 Q. But you've never designed a survey and executed
23 it, on an internet forum, have you?

24 A. That is not true. I designed and conducted
25 many surveys on the internet; but not in the context of

1 gave to Dr. Maronick's survey.

2 Okay, I'm placing before the witness Exhibit
3 144 A.

4 MR. DeGROOT: Looks like Exhibit F.

5 MR. MAKOUS: Well, no, I didn't really put a --
6 pardon me, Counsel. I didn't really place any specific
7 page in front of him. No.

8 MR. DeGROOT: Okay, that's the page that you --

9 MR. MAKOUS: It's 144 A.

10 Yeah, but I'm just opening it. We'll get to a
11 page.

12 MR. DeGROOT: Okay, well, that was the page it
13 was open to. I'm sorry --

14 MR. MAKOUS: Okay.

15 MR. DeGROOT: -- for presuming.

16 MR. MAKOUS: No problem.

17 BY MR. MAKOUS:

18 Q. Let's go to question number 2, okay.

19 You have the exhibit numbers, and I don't.

20 It's Exhibit D.

21 A. Okay.

22 Q. Let's look at the responses to question number
23 2.

24 And just so we're clear, sir, it says -- and
25 agree -- agree with me, or you could disagree, if you're

1 on the wrong page, but it says, number 2, quote:

2 "What does it mean? Please specify."

3 Do you see that, sir?

4 A. Yes.

5 Q. Okay. Do you have any quibble with that
6 question, probing the state of mind of the respondents
7 in this case?

8 A. No, actually, I think that's -- it will be my
9 expectation that most people know that "DMV" stands for
10 Department of Motor Vehicle.

11 Q. So you would agree it's widely known and
12 recognized as an acronym for a State agency, wouldn't
13 you?

14 A. For the Department of Motor Vehicles. I don't
15 know if people know it's a State agency or not, but I do
16 think people know it's Department of Motor Vehicles.

17 Q. Okay. Now let's turn to the next survey, which
18 is -- I guess is Exhibit E, sir, in Exhibit 144.

19 All right. Now you see that Dr. Maronick went
20 through a number of -- of qualifying questions, and sort
21 of essentially setting this up in an internet
22 environment.

23 Question number 1 or statement number 1 and its
24 following question says:

25 "Assume you had received a traffic

1 ticket. Would you consider going to
2 traffic school?"

3 Do you have any problem with that question?

4 A. It's the thing I said in my report; it's
5 phrased so broadly that pretty much everyone, I mean,
6 not exactly everyone, but overwhelming majority of
7 people, especially online-pool members who want to earn
8 points or prizes or whatever it is, are likely to say
9 "Yes." Why would you say "No" to the fact that you
10 would consider going to a traffic school?

11 Q. Well, you've studied the traffic-school market,
12 have you not?

13 A. Well, just in the context of this case, I just
14 visited different websites.

15 Q. Okay. What websites did you visit?

16 A. Well, one was --

17 Q. Before you signed your report on August 2nd;
18 not before today. Before you signed your report on
19 August 2nd, what websites did you visit?

20 A. Well, some that appeared on the Google search
21 results; and I do know for a fact that I went to
22 trafficschool.com; that one that I do remember. But I
23 visited some others. I just don't remember.

24 Q. All right. And of course you studied the
25 market for traffic school consumption of services,

1 didn't you?

2 A. What do you mean by that?

3 Q. You looked at the amount of money people spend
4 on traffic school, the -- you evaluated the number of
5 people that go to traffic school, their age range; you
6 studied all those things, didn't you?

7 A. No.

8 Q. Okay. Let's go through your report, on page 11
9 in Exhibit 1001.

10 Yeah. Thank you, sir.

11 Just so we're referenced, Counsel, it's, quote,
12 did the Maronick survey's respondents represent the
13 relevant consumer universe, question mark.

14 That is a question that you posed, is that
15 correct, Dr. Simonson?

16 A. Yes.

17 Q. All right. Paragraph 27, you are talking
18 about, I believe, the very first survey; and you say,
19 the only thing you say about it, I think, is, quote, I'm
20 looking at paragraph 27:

21 "Since this survey merely tested
22 whether people knew what 'DMV' stands for,
23 it was redundant and provided no new
24 information."

25 What were you referring to there? Was

1 A. -- survey was redundant.

2 Q. Okay, in other words, it proved what everybody
3 would already understand and agree to?

4 A. Yes, I think so. Again, I haven't studied it;
5 but I would think so, yes.

6 Q. Now you go to number 28, and now you're
7 shifting to the other three surveys.

8 First, you say, quote:

9 "In all three cases, the respondents
10 were members of the Zoomerang internet
11 panel, who answered that A, they would
12 consider taking an online traffic-school
13 course; and B, they would use Google or
14 Yahoo! search engines to find an online
15 traffic school."

16 Now do you have a problem with that particular
17 screening questions, series of screening questions?

18 A. Yeah, whatever I said in my report.

19 Q. Well, I'm reading your report.

20 A. What's that?

21 Q. I'm reading your report.

22 A. Okay.

23 Q. So what's your problem with it?

24 A. Well, as I said, the first one, namely, "would
25 consider going to traffic school," I thought that was

1 too broad.

2 And with respect to the fact that they -- which
3 -- to which search engine they would use, when, sometime
4 in the future, they would be looking for online traffic
5 school, seems to me like that's something that would be
6 very hard for people to know; and how would you know
7 which search engine you would use, say, four years from
8 now, when you get a ticket, assuming you will decide
9 to -- to take an online traffic school?

10 Q. Why is that any different than a mall-intercept
11 survey, where you ask somebody are they going to buy a
12 new car in the next two years?

13 A. Well, I -- normally, you don't ask about two
14 years, you ask more concretely.

15 In most of the survey that I conduct, we
16 talking about -- I mean, depends; varies from one survey
17 to the next; it would be six months, say.

18 Q. It's commonly done, somewhere between six
19 months and two years, in your business?

20 A. I -- I don't think --

21 Q. I've seen all of it.

22 MR. DeGROOT: Objection.

23 MR. MAKOUS: Okay. Let me just --

24 MR. DeGROOT: Please ask questions --

25 MR. MAKOUS: Yeah, I -- I withdraw --

1 they're experienced; they're supervised, on location.

2 Q. But you're aware that surveys have been
3 excluded in litigation because of the flawed methodology
4 in the field, are you not?

5 A. What specifically are you referring to when you
6 say "in the field"?

7 Q. In the mall, in the case of a mall intercept.

8 A. You mean like poor behavior of interviewers?
9 I'm not sure what you're asking about.

10 Q. You're not aware of any laws -- you haven't
11 read the case law in this, then, have you?

12 A. Some cases I have read.

13 Q. All right. Let's go on to number 31.

14 You're talking about panel members quickly
15 learn things. You're talking about generally, again,
16 your sort of criticism of internet panels; is that
17 basically all you're saying there, 31's a general
18 observation?

19 A. Yeah, I make the point that's stated here.

20 Q. Okay.

21 A. That's what I'm saying.

22 Q. And you're not specifically referring to any of
23 the internet panelists that were used by Dr. Maronick?

24 A. That's correct.

25 Q. All right. Let's go to 32.

1 I think we've talked about this a little bit.

2 Yeah, we've talked about that.

3 Let's go to paragraph 33.

4 Paragraph 33 is an interesting paragraph,
5 because at the end of it, you say, quote:

6 "I do not know the exact percentage of
7 all California consumers who have taken
8 online or offline traffic schools, but the
9 percentage of panel members claiming to
10 have attended a traffic school appears
11 high," close quote.

12 That is your statement, right, sir?

13 A. It is.

14 Q. And aren't you essentially just contradicting
15 yourself there? You really don't know what you're
16 talking about when you say that sort of a sentence, are
17 you?

18 MR. DeGROOT: Objection, argumentative.

19 THE WITNESS: No.

20 BY MR. MAKOUS:

21 Q. Okay. You can't give me --

22 A. I think it's a very coherent sentence.

23 Q. Okay. How can you admit to me that you haven't
24 studied the traffic-school market, and then tell me that
25 the percentage of panel members claiming to have

1 attended traffic school appears high?

2 A. Okay --

3 MR. DeGROOT: Objection, argumentative.

4 THE WITNESS: -- I think that's a matter of
5 fact; and there are probably statistics somewhere about
6 what percentage of all, say, California residents who
7 have attended online traffic school. I don't have that
8 number.

9 BY MR. MAKOUS:

10 Q. Okay. That's good.

11 Next paragraph, 34, you say, quote:

12 "A large percentage of drivers are
13 over 60, and no reason was provided for
14 excluding them from the sample."

15 Let's stay with the first part of that
16 sentence. "A large percentage of drivers are over 60."
17 In California; what percentage is that?

18 A. I don't know the exact percentage.

19 MR. MAKOUS: Okay. All right. Now -- you want
20 to take another break?

21 (A recess was taken.)

22 BY MR. MAKOUS:

23 Q. Placing before the witness Exhibit 148.

24 You can leave your other report open for a
25 minute --

1 don't really care.

2 Let me just go on to --

3 MR. DeGROOT: Well, I care about the accuracy
4 of the record; so --

5 MR. MAKOUS: Well --

6 MR. DeGROOT: -- if we start talking about
7 things that aren't true, I do want to point that out,
8 so -- and the -- and what you just said wasn't true, so
9 I was --

10 MR. MAKOUS: No, I --

11 MR. DeGROOT: -- pointing that out.

12 MR. MAKOUS: -- didn't say anything that wasn't
13 true. The witness has testified how he's testified.

14 Let me just start the examination.

15 MR. DeGROOT: Sure.

16 MR. MAKOUS: And we're --

17 MR. DeGROOT: That's fine.

18 MR. MAKOUS: -- we're losing time.

19 BY MR. MAKOUS:

20 Q. Dr. Simonson, you reviewed Dr. Maronick's
21 report, and you offered your criticisms in your August
22 2nd expert report; is that correct?

23 A. I did.

24 Q. All right. So the question I asked you was, do
25 you have any objections to the stimuli that's set forth

1 in study 3, which is a page of the California traffic
2 schools website from dmv.org?

3 A. Yes.

4 Q. And what are your objections?

5 A. It's just one page. Respondents were not
6 allowed to view additional pages.

7 Q. What's the relevance of whether they did or --
8 were or were not allowed to view additional pages on the
9 website?

10 A. Well, simple; because additional pages would
11 educate them about the company or the outfit whose
12 website this is.

13 Q. But why would a consumer do that? If they were
14 looking for a traffic school in California, and they
15 click onto this page, why would they go to any
16 additional pages?

17 A. Well, they probably will. Because they need
18 additional information.

19 Q. If they were just looking for a traffic school,
20 and they clicked on the icon "I drive safely", and that
21 was their purpose, why would they go back to the dmv.org
22 website for any additional information?

23 A. Typically, consumers examine different web
24 pages. It seemed highly unlikely that people would just
25 look at one page and say, "Okay, go ahead; let's start

1 traffic school." It just doesn't make sense.

2 Q. Why not?

3 A. Because that's an important decision, and
4 people would not base it on just one page. It's highly
5 unlikely. That's not the manner in which consumers make
6 such decisions.

7 Q. What if that was the only purpose for which
8 they went to that page, was to find a traffic school
9 recommended by the DMV? Wouldn't they have found and
10 solved their issues, and move onto another website, or
11 off the computer altogether?

12 A. As I said, they will gather additional
13 information from this website, from other websites; in
14 other words, they would click on various pages in order
15 to obtain information needed in order to make that
16 decision.

17 Q. Okay. That's what you say.

18 Let's say a consumer clicks on "I drive
19 safely", and goes to the next -- wherever that takes
20 him.

21 Have you studied what that web page looks like
22 where they navigate to when they click the "I drive
23 safely" icon in the dmv.org website?

24 A. No; there are all kinds of links they could
25 click on, so I -- I didn't study that particular link.

1 Q. Okay. You -- so you've offered a fairly --
2 well, whatever. I won't characterize it, because
3 Mr. DeGroot will get mad at me; but you've offered an
4 opinion about the consumers going to other pages.

5 What other -- what specific other page would a
6 consumer go to after coming to this page, looking for
7 traffic school, and finding this? What next page would
8 they go to?

9 A. Whatever they choose. I mean, that's an
10 empirical question. Each consumer may choose a
11 different web page.

12 We also don't know how they got to that
13 particular page, which is also important.

14 Q. Well, they were told by the survey that -- to
15 assume they went to a Google search, were looking for
16 online traffic schools, and were put on this page.

17 A. Okay, so --

18 Q. Which is one of the ways, by the way, the
19 defendants' website operates; did you know that?

20 A. Right, but they should have -- in order to
21 mirror marketplace conditions, they should have started
22 with the search-engine results, then told, "Okay, now
23 assume you click on them," so they have the information
24 that they -- presumably they had been exposed to, on the
25 search results; then they would go, if you told them to

1 that response.

2 If you see twice --

3 MR. MAKOUS: Okay.

4 THE WITNESS: -- it has greater impact than if
5 you see it once; and there is always a possibility that
6 maybe you didn't notice it, in the context of the
7 survey, where you're not really looking for traffic
8 school; you just want to complete the survey quickly; so
9 if you see it twice, is -- if it appears twice, there is
10 a high likelihood that you will notice it.

11 BY MR. MAKOUS:

12 Q. Well, Dr. Maronick instructs the survey
13 respondents to take as much time as they normally
14 would. Isn't that a fair instruction to a survey
15 respondent?

16 A. Right; but with the proper stimuli, that would
17 be good.

18 Q. Okay. Are you aware -- you've studied how
19 people work -- you're an expert on how people --
20 consumers view web pages, aren't you?

21 A. To the extent that there is anyone who is
22 expert in that very narrow area, yes.

23 Q. Okay. Are you aware of how long consumers
24 spend on any specific screen, when they're presented
25 with a screen?

1 A. It really depends. There are some screens that
2 people spend a great deal of time on, and others where
3 they don't.

4 Q. All right, and you didn't attempt to measure,
5 on dmv.org's own website, how long people spent on this
6 specific page, did you?

7 A. I did not conduct any survey.

8 Q. Okay. And are you aware that web pages -- that
9 consumers don't scroll all the way down to the bottom,
10 just because you can?

11 A. Sometimes they do and sometimes they don't.

12 Q. And nowhere on this page, this is defendants'
13 page, sir, do they invite the consumer to scroll, do
14 they?

15 A. No.

16 MR. DeGROOT: Objection; assumes facts not in
17 evidence, misleading. Argumentative.

18 BY MR. MAKOUS:

19 Q. Your answer is "No"? Your answer is "No"?

20 A. My answer is that you let the consumers do what
21 they wish; in other words, in this case, the survey
22 respondents, if they are not inclined to scroll to the
23 bottom, they'll not do that.

24 Q. Are you aware that it takes three -- do you
25 know what a page fold is, in an internet concept, do you

1 getting married.

2 Q. But you've not studied the factors that people
3 take into consideration when buying an online traffic
4 school, have you, sir?

5 A. No; I've studied general principles of consumer
6 decision-making. That's what I do research on; that's
7 what I teach. That's my expertise. And on that basis,
8 I can apply or determine whether a particular decision
9 is relatively higher involvement or not.

10 Q. But you've not studied it, have you, traffic
11 schools?

12 A. I've not conducted any surveys in this case.

13 Q. All right, and you've not studied any marketing
14 literature about traffic schools and what's involved in
15 selecting a traffic school, have you, sir?

16 A. There is no marketing literature on that
17 specific subject. That's why we learn general
18 principles that would apply across categories.

19 Q. Did you attempt to locate marketing literature
20 on this and were unable to find it, is that what you're
21 telling me?

22 A. No.

23 Q. Or are you telling me, because you say it, it
24 is so?

25 MR. DeGROOT: Objection, argumentative.

1 BY MR. MAKOUS:

2 Q. Please answer that.

3 I'm trying to understand his answer.

4 A. Well, there is no study. If you can show me a
5 study focusing on that, I would stand corrected. I've
6 not encountered any study. In my work as a teacher and
7 a researcher, I come across many studies.

8 Q. But you don't know the profile of an average
9 traffic school online taker in the State of California,
10 do you?

11 A. What do you mean by "profile"?

12 Q. Demographic profile.

13 A. I haven't looked at the demographic profile of
14 the average.

15 Q. Do you have any reason to disagree with
16 Dr. Maronick's demographic profile, as determined by
17 conducting these surveys, and the various questions he's
18 asked?

19 A. At what -- I didn't know that he determined
20 what the demographics were, aside from asking people,
21 those who were respondents in his survey.

22 Q. Correct.

23 Do you have any reason to dispute the
24 demographic profile that he created, by asking questions
25 of the survey respondents, as being correct or incorrect

1 in any way?

2 A. I haven't looked at the demographics of the
3 people who actually take that school. I think one issue
4 of those pools is it tends to include more females, and
5 I'm not sure if that's the case here, than the general
6 population.

7 Q. Okay. Are you aware that it was almost a 50-50
8 split between men and women, in these various surveys
9 that Dr. Maronick conducted?

10 A. I don't remember that; but if you tell me, I'll
11 take your word, presentation.

12 Q. Now let's turn to survey number 4; and survey
13 number 4 is a different kind of survey.

14 I want you to turn to -- again, I'm on Exhibit
15 144.

16 MR. DeGROOT: Which is now Exhibit G --

17 MR. MAKOUS: Thank you.

18 MR. DeGROOT: -- you're going to discuss?

19 MR. MAKOUS: Yes.

20 Let me make sure I've got it.

21 Pardon me for reaching here.

22 Let's see what that says.

23 Yeah.

24 Witness has in front of him Exhibit G of
25 Dr. Maronick's report. And it says Traffic School dash

1 **PROOF OF SERVICE**
2 TrafficSchool.com, Inc. v. Edriver, Inc. - File No. 25162-14

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 At the time of service, I was over 18 years of age and not a party to the action.
5 My business address is . I am employed in the office of a member of the bar of this
6 Court at whose direction the service was made.

7 On November 9, 2007, I served the following document(s):

8 **PLAINTIFFS' DESIGNATION OF SELECTED DEPOSITION**
9 **TESTIMONY OF ITAMAR SIMONSON IN LIEU OF CROSS-**
10 **EXAMINATION PURSUANT TO COURT ORDER ISSUED FROM BENCH**
11 **ON 11/8/2007**

12 I served the documents on the following persons at the following addresses
13 (including fax numbers and e-mail addresses, if applicable):

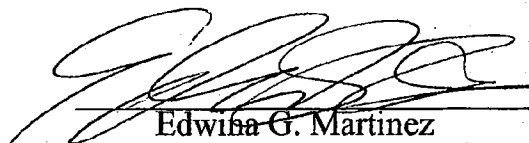
14 Brian M. Daucher, Esq.
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Executed on November 9, 2007, at Los Angeles, California.


Edwina G. Martinez